



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 8, 2005

Mr. Mark Mann
Assistant City Attorney
City of Garland
P. O. Box 469002
Garland, Texas 75046-9002

OR2005-03007

Dear Mr. Mann:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221627.

The City of Garland (the "city") received a request for information pertaining to the top ten highest paid city employees on the city payroll. You state that the city has released some of the responsive information. However, you claim that the remaining requested information is excepted from disclosure pursuant to section 552.133 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Initially, we note that the information at issue is subject to section 552.022 of the Government Code. Section 552.022 provides that the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

...

(2) the name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of a governmental body[.]

Gov't Code § 552.022(a)(2). In this instance, you seek to withhold information that relates to the current salaries of electric utility employees. That information is subject to section 552.022(a)(2) and would ordinarily be public. Section 552.133(d) provides, however, that "[t]he requirement of Section 552.022 that a category of information listed

under Section 552.022(a) is public information and not excepted from required disclosure under this chapter unless expressly confidential under other law does not apply to information that is excepted from required disclosure under [section 552.133].” Accordingly, we will address your claim under section 552.133 with regard to the information that the city seeks to withhold.

Section 552.133 of the Government Code excepts from required public disclosure information held by a public power utility that is related to a competitive matter. *See* Gov’t Code § 552.133(b). “Competitive matter” is defined as a matter that the public power utility governing body in good faith determines by vote to be related to the utility’s competitive activity. *Id.* § 552.133(a)(3). The governing body also must determine, in like manner, that the release of the information would give an advantage to competitors or prospective competitors. *Id.* Section 552.133(a)(3) lists thirteen categories of information that may not be deemed to be competitive matters. The attorney general may conclude that section 552.133 is inapplicable to the information at issue only if, based on the information provided, the attorney general determines that the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. *Id.* § 552.133(c). Furthermore, section 552.133(b) provides as follows:

Information or records are excepted from [required public disclosure] if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Id. § 552.133(b).

You inform us that the city owns and operates its own electric utility and that the city council is the utility’s governing body for purposes of section 552.133. You further explain that on July 18, 2000, the city council approved Resolution No. 8383, declaring certain information to be competitive for purposes of section 552.133. You have submitted a copy of the resolution in requesting this decision. The requested information that you have highlighted in yellow is not among the thirteen categories of information expressly exempted from the definition of competitive matter, and based on the information provided in connection with

this request, we cannot conclude that the city council failed to act in good faith. Consequently, we agree that the yellow highlighted information relates to a competitive matter in accordance with the city's resolution and, therefore, is excepted from disclosure pursuant to section 552.133 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Debbie K. Lee
Assistant Attorney General
Open Records Division

DKL/krl

Ref: ID# 221627

Enc. Submitted documents

c: Ken Kalthoff
News Reporter
NBC 5 - KXAS
3100 McKinnon Ave., Suite 850
Dallas, TX 75201
(w/o enclosures)